

OMB APPROVAL

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SECURITIES AND EXCHANGE COMMISSION
 WASHINGTON, D.C. 20549
 Form 19b-4

File No. SR - 2009 - 14

Proposed Rule Change by The Depository Trust Company
 Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial <input checked="" type="checkbox"/>	Amendment <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) <input type="checkbox"/>	Section 19(b)(3)(A) <input checked="" type="checkbox"/>	Section 19(b)(3)(B) <input type="checkbox"/>
Pilot <input type="checkbox"/>			Rule		
Extension of Time Period for Commission Action <input type="checkbox"/>			<input type="checkbox"/> 19b-4(f)(1)	<input checked="" type="checkbox"/> 19b-4(f)(4)	
			<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)	

Description

Provide a brief description of the proposed rule change (limit 250 characters).

The Depository Trust Company is filing the proposed rule change in order to modify the language contained within the Confirmation of an OFAC Program Letter.

Contact Information

Provide the name, telephone number and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the proposed rule change.

First Name Last Name

Title

E-mail

Telephone Fax

Signature

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized officer.

Date

By General Counsel
 (Name)

(Title)

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

Digitally Sign and Lock Form

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFF website.

Form 19b-4 Information

The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit Sent As Paper Document

Exhibit 3 - Form, Report, or Questionnaire

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit Sent As Paper Document

Exhibit 4 - Marked Copies

The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

Partial Amendment

If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change.

(a) The Depository Trust Company (“DTC”) is filing the proposed rule change in order to modify the language contained within the “Confirmation of an OFAC Program” Letter (“OFAC Letter”) which was recently filed with the U.S. Securities and Exchange Commission (the “Commission”).¹

2. Procedures of the Self-Regulatory Organization.

(a) DTC’s Board of Directors has not taken, and is not required to take, action on the proposed rule change.

3. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change.

(a) On April 22, 2009, DTC filed a rule change with the Commission in order to clarify the obligation of Participants and Pledges related to the sanctions and embargo programs administered and enforced by OFAC (the “DTC rule change”). The DTC rule change requires that Participants and Pledges that are subject to the jurisdiction of the U.S. (“U.S. Participants and Pledges”) submit an OFAC Letter to DTC in which they confirm that they have implemented a risk-based OFAC compliance program.² The OFAC Letter is intended to document that the Participant or the Pledgee has implemented a program to conduct appropriate risk-based OFAC screening. Additionally, the Participant or Pledgee is confirming through the OFAC letter that activity subject to OFAC sanctions regulations has been excluded from business conducted through DTC. DTC received two comment letters related to its rule change, both of which are discussed below and attached as Exhibit 2.³

1. Certification of OFAC Screening

Both comment letters asserted that paragraph two of the OFAC Letter imposed additional obligations relating to third parties that were inconsistent with OFAC guidance and industry standards. After consultation with OFAC and the Commission and further discussions with the commentators, DTC has agreed to modify the language of this provision in order to clarify that all U.S. Participants and Pledges are required to screen customers for OFAC compliance. DTC recognizes that the screening of customers alone may not be sufficient to address the U.S. Participant’s or Pledgee’s OFAC obligations. Accordingly, U.S. Participants and Pledges will be required to confirm that additional

¹ See DTC Rule Filing 2009-07 (April 22, 2009).

² For more information relating to this filing, see Id.

³ DTC received one comment letter from the American Bankers Association (“ABA”) and one comment letter issued jointly by the Securities Industry and Financial Markets Association (“SIFMA”) and The Clearing House.

screening on other parties is conducted when warranted based on the U.S. Participants and Pledges risk assessment.

2. Certification of Exclusion from Business

Both commentators also indicated that the language within the third paragraph of the OFAC Letter was overly broad and was inconsistent with the requirement that U.S. Participants and Pledges implement a risk-based OFAC program. Currently, DTC's Rules require that U.S. Participants and Pledges certify that they will exclude from their Business at DTC any transaction that violates OFAC. DTC's intent was that this provision be consistent with the U.S. Participant's or Pledgee's risk-based OFAC program; it was not DTC's intent to impose a higher burden. Accordingly, DTC, in consultation with OFAC and the Commission, has modified the language in DTC's Rule 2, Section 8, its Service Guide, and in the third paragraph of the OFAC Letter in order to clarify that U.S. Participants and Pledges will not submit transactions that it knows are subject to OFAC sanctions regulations. When determining the U.S. Participant or Pledgee's knowledge of activity that is subject to OFAC sanctions regulations, DTC will utilize standards established pursuant to the OFAC Economic Sanctions Enforcement Guidelines. Under the current OFAC Economic Sanctions Enforcement Guidelines,⁴ this provision would include willfully or recklessly violating OFAC sanctions regulations where the U.S. Participant or Pledgee has actual knowledge or reason to know of a violation. DTC will rely on determinations made by OFAC or other competent authorities to determine whether U.S. Participants and Pledges are in compliance with this obligation.

3. Filing the OFAC Letter and the Associated Fine

The commentators indicated that the time period for when U.S. Participants and Pledges must file the OFAC Letter was unclear. In an effort to clarify the time period, DTC has laid out the requirements below:

DTC will make the OFAC Letter available for execution by U.S. Participants or Pledges on or before October 1, 2009. DTC must receive a validly executed OFAC Letter from all U.S. Participants or Pledges on or before March 31, 2010, in order for the U.S. Participant or Pledgee to satisfy the obligations imposed under these Rules. U.S. Participants or Pledges who fail to provide DTC with the OFAC Letter by March 31, 2010, will be subject to a \$5,000 fine for failure to provide the initial OFAC Letter. This fine is imposed for failure to provide documentation required under DTC's Rules. DTC reserves the right to impose further fines or penalties, up to and including ceasing to act on behalf of the Participant or Pledgee, for violation of the Rules relating to the obligation of the Participant or Pledgee to comply with OFAC sanctions regulations.

⁴ The OFAC Economic Sanctions Enforcement Guidelines are contained within 31 C.F.R Part 501 Appendix A. OFAC has proposed revisions to the Economic Sanctions Enforcement Guidelines which are available at http://www.ustreas.gov/offices/enforcement/ofac/policy/enf_guide_09082008.pdf.

DTC must receive a validly executed OFAC Letter from all U.S. Participants or Pledges every two years. If the OFAC Letter executed by the Participant or Pledgee is dated March 1, 2010, the U.S. Participant or Pledgee must execute and send an updated OFAC Letter by March 1, 2012. Because of the potential for different renewal dates, DTC will remind individual U.S. Participants and Pledgees of the expiration of its current OFAC Letter approximately ninety (90) days prior to their expiration date. Additionally, DTC will send out an Important Notice every two years that will remind U.S. Participants and Pledgees of this obligation generally. Although the combination of the Important Notice and the individual reminders are intended to reinforce the obligation of U.S. Participants and Pledgees, it is ultimately the responsibility of the U.S. Participant and Pledgee to satisfy the requirements of DTC's Rules regarding the OFAC Letter.

The execution of the OFAC Letter is the legal responsibility of the U.S. Participant or Pledgee and not of the Chief Compliance Officer, OFAC Compliance Officer or other representative responsible for managing the OFAC compliance program ("Authorized OFAC Officer") of the U.S. Participant or Pledgee. Therefore, the fine is imposed against the U.S. Participant or Pledgee and is the legal obligation of the U.S. Participant or Pledgee and not the Authorized OFAC Officer. To clarify this point, the OFAC Letter has been updated to indicate that the Authorized OFAC Officer is signing on behalf of the U.S. Participant or Pledgee.

(b) The proposed rule change is consistent with the requirements of the Securities Exchange Act of 1934, as amended (the "Exchange Act") and the rules and regulations thereunder, because it will enhance DTC's compliance with applicable laws thereby reducing risks and associated costs to DTC and its Participants.

4. Self-Regulatory Organization's Statement on Burden on Competition.

DTC does not believe that the proposed rule change will have any impact, or impose any burden, on competition.

5. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others.

As part of the process of amending the OFAC Letter, DTC received and responded to comments from representatives of the industry groups that submitted comments to SR-DTC-2009-07. DTC will notify the Commission of any additional written comments received by DTC.

6. Extension of Time Period for Commission Action.

DTC does not consent to an extension of the time period specified in Section 19(b)(2) of the Act for Commission action.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2) or Section 19(b)(7)(D).

(a) This filing is made pursuant to paragraph (A) of Section 19(b)(3) of the Act and subparagraph (f) of Securities Exchange Act Rule 19b-4, and shall become effective upon filing. DTC will make the OFAC Letter available on October 1, 2009. All U.S. Participants and Pledges are required to submit the required OFAC Letter on or before March 31, 2010.

(b) The proposed rule change effects a change to a procedure of DTC that (A) does not adversely affect the safeguarding of securities or funds in the custody or control of DTC or for which it is responsible and (B) does not significantly affect the respective rights or obligations of DTC or persons using the service.

(c) Not applicable.

(d) Not applicable.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission.

The proposed rule change is not based on the rules of another self-regulatory organization or the Commission.

9. Exhibits

Exhibit 1 – Notice of proposed rule change for publication in the Federal Register

Exhibit 2 – Comments received from the American Bankers Association and the Securities Industry and Financial Markets Association.

Exhibit 3 – OFAC Letter

Exhibit 4 – Not applicable

Exhibit 5 – Changes to DTC's Rules and Procedures

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-_____ ; File No. SR-DTC-2009-14)

SELF-REGULATORY ORGANIZATIONS

Proposed Rule Change by The Depository Trust Company ("DTC") to modify the language contained within the "Confirmation of an OFAC Program" Letter ("OFAC Letter")

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on _____, DTC filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The text of the proposed rule change is attached hereto as Exhibit 5.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change.

(a) On April 22, 2009, DTC filed a rule change with the Commission in order to clarify the obligation of Participants and Pledges related to the sanctions and embargo programs administered and enforced by OFAC (the "DTC rule change"). The DTC rule change requires that Participants and Pledges that are subject to the jurisdiction of the U.S. ("U.S. Participants and Pledges") submit an OFAC Letter to DTC in which they

confirm that they have implemented a risk-based OFAC compliance program.¹ The OFAC Letter is intended to document that the Participant or the Pledgee has implemented a program to conduct appropriate risk-based OFAC screening. Additionally, the Participant or Pledgee is confirming through the OFAC letter that activity subject to OFAC sanctions regulations has been excluded from business conducted through DTC. DTC received two comment letters related to its rule change, both of which are discussed below and attached as Exhibit 2.²

1. Certification of OFAC Screening

Both comment letters asserted that paragraph two of the OFAC Letter imposed additional obligations relating to third parties that were inconsistent with OFAC guidance and industry standards. After consultation with OFAC and the Commission and further discussions with the commentators, DTC has agreed to modify the language of this provision in order to clarify that all U.S. Participants and Pledgees are required to screen customers for OFAC compliance. DTC recognizes that the screening of customers alone may not be sufficient to address the U.S. Participant's or Pledgee's OFAC obligations. Accordingly, U.S. Participants and Pledgees will be required to confirm that additional screening on other parties is conducted when warranted based on the U.S. Participants and Pledgees risk assessment.

2. Certification of Exclusion from Business

Both commentators also indicated that the language within the third paragraph of the OFAC Letter was overly broad and was inconsistent with the requirement that U.S. Participants and Pledgees implement a risk-based OFAC program. Currently, DTC's Rules require that U.S. Participants and Pledgees certify that they will exclude from their Business at DTC any transaction that violates OFAC. DTC's intent was that this provision be consistent with the U.S. Participant's or Pledgee's risk-based OFAC program; it was not DTC's intent to impose a higher burden. Accordingly, after consultation with OFAC and the Commission, DTC has modified the language in Rule 2, Section 8, its Service Guide, and in the third paragraph of the OFAC Letter to clarify that U.S. Participants and Pledgees will not submit transactions that it knows are subject to OFAC sanctions regulations. When determining the U.S. Participant or Pledgee's knowledge of activity that is subject to OFAC sanctions regulations, DTC will utilize standards established pursuant to the OFAC Economic Sanctions Enforcement Guidelines. Under the current OFAC Economic Sanctions Enforcement Guidelines, the provision would include willfully or recklessly violating OFAC sanctions regulations where the U.S. Participant or Pledgee has actual knowledge or reason to know of a

¹ For more information relating to this filing, see *Id.*

² DTC received one comment letter from the American Bankers Association ("ABA") and one comment letter issued jointly by the Securities Industry and Financial Markets Association ("SIFMA") and The Clearing House.

³ The OFAC Economic Sanctions Enforcement Guidelines are contained within 31 C.F.R. Part 501 Appendix A. OFAC has proposed revisions to the Economic Sanctions Enforcement Guidelines which are available at http://www.ustreas.gov/offices/enforcement/ofac/policy/enf_guide_09082008.pdf.

violation. DTC will rely on determinations made by OFAC or other competent authorities to determine whether U.S. Participants and Pledges are in compliance with this obligation.

3. Filing the OFAC Letter and the Associated Fine

The commentators indicated that the time period for when U.S. Participants and Pledges must file the OFAC Letter was unclear. In an effort to clarify the time period, DTC has laid out the requirements below:

DTC will make the OFAC Letter available for execution by U.S. Participants or Pledges on or before October 1, 2009. DTC must receive a validly executed OFAC Letter from all U.S. Participants or Pledges on or before March 31, 2010, in order for the U.S. Participant or Pledge to satisfy the obligations imposed under these Rules. U.S. Participants or Pledges who fail to provide DTC with the OFAC Letter by March 31, 2010, will be subject to a \$5,000 fine for failure to provide the initial OFAC Letter. This fine is imposed for failure to provide documentation required under DTC's Rules. DTC reserves the right to impose further fines or penalties, up to and including ceasing to act on behalf of the Participant or Pledge, for violation of the Rules relating to the obligation of the Participant or Pledge to comply with OFAC sanctions regulations.

DTC must receive a validly executed OFAC Letter from all U.S. Participants or Pledges every two years. If the OFAC Letter executed by the Participant or Pledge is dated March 1, 2010, the U.S. Participant or Pledge must execute and send an updated OFAC Letter by March 1, 2012. Because of the potential for different renewal dates, DTC will remind individual U.S. Participants and Pledges of the expiration of its current OFAC Letter approximately ninety (90) days prior to their expiration date. Additionally, DTC will send out an Important Notice every two years that will remind U.S. Participants and Pledges of this obligation generally. Although the combination of the Important Notice and the individual reminders are intended to reinforce the obligation of U.S. Participants and Pledges, it is ultimately the responsibility of the U.S. Participant and Pledge to satisfy the requirements of DTC's Rules regarding the OFAC Letter.

The execution of the OFAC Letter is the legal responsibility of the U.S. Participant or Pledge and not of the Chief Compliance Officer, OFAC Compliance Officer or other representative responsible for managing the OFAC compliance program ("Authorized OFAC Officer") of the U.S. Participant or Pledge. Therefore, the fine is imposed against the U.S. Participant or Pledge and is the legal obligation of the U.S. Participant or Pledge and not the Authorized OFAC Officer. To clarify this point, the OFAC Letter has been updated to indicate that the Authorized OFAC Officer is signing on behalf of the U.S. Participant or Pledge.

(ii) The proposed rule change is consistent with the requirements of the Securities Exchange Act of 1934, as amended (the "Exchange Act") and the rules and regulations thereunder, because it will enhance DTC's compliance with applicable laws thereby reducing risks and associated costs to DTC and its Participants.

B. Self-Regulatory Organization's Statement on Burden on Competition.

DTC does not believe that the proposed rule change will have any impact, or impose any burden, on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others.

Written comments relating to the proposed rule change have not yet been solicited or received. DTC will notify the Commission of any written comments received by DTC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The forgoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and paragraph (f) of Rule 19b-4 thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

- Electronic comments may be submitted by using the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>), or by sending an e-mail to rule-comment@sec.gov. Please include File No. SR-DTC-2009-14 on the subject line.
- Paper comments should be sent in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington D.C. 20549-1090.

All submissions should refer to File Number SR-DTC-2009-14. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C §552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE, Washington

D.C. 20549-9303. Copies of such filing also will be available for inspection and copying at DTC's principal office and on DTC's Web site at www.dtc.org. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to the file number above and should be submitted within _____ days after the date of publication.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.

Elizabeth M. Murphy
Secretary



Peter Lepiane/DTCC
08/07/2009 03:03 PM

To: Allen Love Jr./DTCC
cc
bcc
Subject: Fw: DTCC OFAC Confirmation

----- Forwarded by Allen Love Jr./DTCC on 08/03/2009 11:13 AM -----



Cristeena Naser
<cnaser@aba.com>
07/31/2009 04:08 PM

To: Allen Love Jr./DTCC@DTCC
cc
Subject: RE: DTCC OFAC Confirmation

Allen, thanks for your e-mail. We appreciate your efforts to incorporate our comments into the draft below. ABA does have some remaining concerns, however, which we address below.

First, in the second paragraph, we remain concerned that DTCC's version does not completely reflect the fact that the User may apply its own risk-based compliance program. We suggest the following language to make this more clear:

As part of its risk-based compliance program, [User name] screens customers, and other parties as applicable based on the [User Name]'s risk assessment, against the most recent version of OFAC's List of Blocked Persons, Specially Designated Nationals, Specially Designated Terrorists, Specially Designated Global Terrorists, Foreign Terrorist Organizations, Specially Designated Narcotics Traffickers, and against any other lists maintained by OFAC (collectively referred to as the "SDN List").

Second, the footnote attached to the word "know's" in paragraph 3 is susceptible to multiple interpretations based on the fact that OFAC does not define the term "knows". Our interpretation is that OFAC will make the determination as to the standard and that DTCC will not take action against the User independent of OFAC's determination.

Third, paragraph 5 as written does not include statements DTCC made during conversations with the industry. We have revised the paragraph to reflect those discussions:

[User name] understands that it must execute an updated Certification of OFAC Compliance at least every two (2) years. DTC will communicate, administer and manage the renewal process.

Fourth, we believe that the signature line should reflect the fact that the OFAC Officer is signing on behalf of the User. See our suggested revision below:

By: _____
Authorized OFAC Officer's Signature
on behalf of [User name]

Title: _____

Name: _____

Phone: _____

PRINT

Finally, we believe that the proposed fine of \$5,000 is not in line with the Harmonization Rules which suggests that the fine for a failure to timely submit this certification should be \$1,000. Please confirm that this is the case.

I look forward to working with you to finalize this certification letter. Please don't hesitate to contact me if you have any questions. Cris

Cristeena Naser, Senior Counsel
Center for Securities, Trust & Investment
American Bankers Association

Associate General Counsel
ABA Securities Association
202-663-5332
cnaser@aba.com

The American Bankers Association established the Center for Securities, Trust and Investments in 1999 to assist members engaged in fiduciary and asset management services. The Center works closely with legislators and regulators to ensure that laws and regulations are in the interests of the industry and the public it serves. www.aba.com/Solutions/Trust.htm

From: Allen Love Jr. [mailto:alovejr@dtcc.com]
Sent: Wednesday, July 29, 2009 4:58 PM
To: Arlene.Semaya@jpmorgan.com; Cristeena Naser; dan.becker@bnymellon.com; JeHorowitz@pershing.com; joe.alexander@nych.org; michelle.l.neufeld@bankofamerica.com; Molly.McLane@morganstanley.com; Peter Lepiane; william.d.langford@jpmchase.com
Cc: Mihal Nahari; Peter Lepiane; Allen Love Jr.
Subject: DTCC OFAC Confirmation

All,

First, let me say thank you for meeting earlier this month and providing your comments/opinions on the OFAC Confirmation. One of the takeaways from our call was for DTCC to ask OFAC if they would entertain a call to discuss the OFAC Confirmation. We spoke with OFAC, and they informed us that they have already had a number of "informal" discussions on this matter and further discussions are not needed.

Second, DTCC spoke with OFAC and the SEC about the concerns expressed in your comment letters and verbally about the OFAC Confirmation. Both OFAC and the SEC communicated to us that they still support the OFAC Confirmation. However, they did ask us to consider making modifications to the language used in the OFAC Confirmation so that it addresses the concerns that were raised. Specifically, they asked us to consider modifying the language in bullet two and three of the Confirmation and we agreed to do so. We also reviewed drafts of our revised language below to balance your concerns and the expectations of OFAC and the SEC. Below you will see excerpts from the OFAC Confirmation that show the language that has been modified. I have put the changes in the format below so that you can see what the original language for these two items were.

2. As part of its risk-based compliance program, [User name] screens customers and, as well as

~~where applicable based on identified risk factors~~, direct and indirect owners, controlling parties or other third-parties where applicable based on identified risk factors, against the most recent version of OFAC's List of Blocked Persons, Specially Designated Nationals, Specially Designated Terrorists, Specially Designated Global Terrorists, Foreign Terrorist Organizations, Specially Designated Narcotics Traffickers, and against any other lists maintained by OFAC (collectively referred to as the "SDN List").

3. ~~Unless otherwise authorized by OFAC, Based on the screening conducted pursuant to [User name] 's risk-based OFAC compliance program, [User name] will not submit~~ has excluded from any Business it introduces to the Clearing Agencies all persons or entities on the SDN List and all persons with whom it is otherwise impermissible for DTCC the Clearing Agencies to engage in transactions under applicable that [User Name] knows to be subject to OFAC sanctions regulations, unless otherwise authorized by OFAC.

It should be noted that there is footnote in the OFAC Confirmation explaining the determination of User's knowledge (see footnote language below).

For the purpose of determining the User's knowledge, the Clearing Agencies will utilize the term as defined by OFAC and will rely on determinations made by OFAC pursuant to OFAC Economic Sanctions Enforcement Guidelines

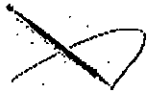
Attached you will find a clean version of the OFAC confirmation. Please review and provide comments by COB Friday. Hopefully the revised language that has been agreed upon with the SEC and OFAC to address your concerns is acceptable. In light of the prior agreement with the SEC and OFAC, we will take any additional comments under advisement.

Allen G. Love
Vice President
Office of Corporate and Regulatory Compliance
The Depository Trust Clearing Corporation
alovejr@dtcc.com
Phone: (212) 855-2237
Fax (212) 855-1177

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We are sending you this e-mail primarily for your information, to meet your needs and further our valued relationship. If you prefer not to receive any further messages from us, just reply to this e-mail and let us know. Thanks.

American Bankers Association 1120 Conn. Ave NW Wash DC 20036



Peter Lepiane/DTCC
08/07/2009 03:02 PM

To Allen Love Jr./DTCC
cc Mihal Nahari/DTCC@DTCC
bcc
Subject Fw: DTCC OFAC Confirmation

----- Forwarded by Allen Love Jr./DTCC on 07/31/2009 04:01 PM -----



"Foster, Ryan"
<rfoster@sifma.org>
07/31/2009 03:49 PM

To Allen Love Jr./DTCC@DTCC
cc "Betty.Santangelo@srz.com" <Betty.Santangelo@srz.com>, "Neufeld, Michelle L" <michelle.l.neufeld@bankofamerica.com>, 'Joe.Alexander' <Joe.Alexander@theclearinghouse.org>
Subject DTCC OFAC Confirmation

Allen,

We sincerely appreciate the work that DTCC has done in incorporating the concerns expressed in our comment letter and we commend you and your staff for all of your efforts in leading this initiative. Thank you for the opportunity to comment on the modifications to the language used in the OFAC Confirmation. As both OFAC and the SEC have communicated to you that they still support the OFAC Confirmation, we would like to offer our proposed modifications. Below you will see excerpts from the OFAC Confirmation that show the language that has been modified by the Clearing House and SIFMA.

1. Paragraph 2 – suggested revision

As part of its risk-based compliance program, *[User name]* screens customers, as well as ~~direct and indirect owners, controlling parties or other third- parties where~~ as applicable based on ~~identified risk factors~~ the *[User Name]* 's risk assessment, against the most recent version of OFAC's List of Blocked Persons, Specially Designated Nationals, Specially Designated Terrorists, Specially Designated Global Terrorists, Foreign Terrorist Organizations, and Specially Designated Narcotics Traffickers, ~~and against any other lists maintained by OFAC~~ (collectively referred to as the "SDN List").

2. Footnote 2 attached to *knows* in paragraph 3 is susceptible to multiple interpretations based on the fact that OFAC does not define the term 'knows'. Our interpretation is that OFAC will make the determination as to the standard and that DTCC will not take action against User independent of OFAC's determination.

3. Paragraph 5 – suggested revision to reflect the oral conversation on this topic *[User name]* understands that it must execute an updated Certification of OFAC Compliance at least every two (2) years. DTCC will communicate, administer and manage the renewal process.

4. Signature line - suggested addition to qualify and reflect that the OFAC Officer is signing on behalf of the User.

By: _____

Title:

Authorized OFAC Officer's Signature

on behalf of [User name]

Name: _____

Phone: _____

PRINT

5. Status of fine – The comment letter suggests that the proposed fine of \$5,000 is not in line with the Harmonization Rules which suggests that the fine for a failure to timely submit this Certification should be \$1,000.

Again, we appreciate the opportunity to provide our comments on the OFAC Confirmation. If you have any questions concerning our modifications, or need additional information, please feel free to contact me.

Ryan D. Foster

Office of the General Counsel

SIFMA

Securities Industry and Financial Markets Association

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The Powerful Voice of the Securities Industry and Global Capital Markets

<http://www.SIFMA.org>

EXHIBIT 3

SR-DTC-2009-14

Underlined boldface text indicates additions

~~Struck though boldface~~ text indicates deletions

CONFIRMATION OF AN OFAC PROGRAM

[User's Letterhead]

Date:

The Depository Trust Company,
National Securities Clearing Corporation,
Fixed Income Clearing Corporation
c/o The Depository Trust & Clearing Corporation
55 Water Street,
New York, NY 10041
Attention: OFAC Officer

Re: Confirmation of an OFAC Program

I am the OFAC Compliance Officer, Chief Compliance Officer or am otherwise responsible for managing *[User name]*¹'s OFAC or sanctions compliance program. This certification is being executed in accordance with applicable rules related to the *[User name]*'s compliance with sanctions regulations (31 CFR Chapter V and Appendices) administered by the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC") and applies to all transactions and business activities (collectively referred to as "Business") conducted through The Depository Trust Company, National Securities Clearing Corporation, and both divisions of the Fixed Income Clearing Corporation (collectively the "Clearing Agencies").

[User name] hereby certifies as follows:

¹ For the purposes of this certification User means: a Participant or Pledgee of DTC; a Member or Limited Member, with the exception of Commission Billing Members, Data Services Only Members, Municipal Comparison Only Members, Third Party Administrator Members and Investment Manager/Agent Member of NSCC; a Member of FICC's Government Securities Division, with the exception of GSD Comparison Only Members; and a Participant or a Limited Purpose Participant of FICC's Mortgage-Backed Securities Division, with the exception of EPN Only Members.

1. *[User name]* is a "United States person" (as defined under applicable OFAC sanctions regulations) that is subject to, and has implemented a risk-based program reasonably designed to comply with, applicable OFAC sanctions regulations.
2. As part of its risk-based compliance program, *[User name]* screens customers **and, as well as where applicable based on identified risk factors, direct and indirect owners, controlling parties or other third-parties where applicable based the *[User name]*'s risk assessment**, against the most recent version of OFAC's List of Blocked Persons, Specially Designated Nationals, Specially Designated Terrorists, Specially Designated Global Terrorists, Foreign Terrorist Organizations, Specially Designated Narcotics Traffickers, and against any other lists maintained by OFAC (collectively referred to as the "SDN List").
3. ~~Unless otherwise authorized by OFAC,~~ **Based on the screening conducted pursuant to *[User name]*'s risk-based OFAC compliance program, *[User name]* will not submit has excluded from** any Business ~~it introduces~~ to the Clearing Agencies **all persons or entities on the SDN List and all persons with whom it is otherwise impermissible for DTCC the Clearing Agencies to engage in transactions under applicable that *[User Name]* knows² to be subject to** OFAC sanctions regulations, **unless otherwise authorized by OFAC.**
4. *[User name]* agrees to provide an updated Certification of OFAC Compliance, if required, due to a merger, acquisition or other corporate change that affects its membership and requires *[User name]* to notify the Clearing Agencies.
5. *[User name]* understands that it must execute an updated Certification of OFAC Compliance at least every two (2) years.

This Certification of OFAC Compliance applies to any and all accounts for the *[User name]*'s at the Clearing Agencies.

By: _____
*Authorized OFAC Officer's Signature
on behalf of *[User name]**

Title: _____

Name: _____
PRINT

Phone: _____

E-Mail Address: _____

² **For the purpose of the determining the User's knowledge, the Clearing Agencies will utilize the term as defined by OFAC and will rely on determinations made by OFAC pursuant to OFAC Economic Sanctions Enforcement Guidelines.**

Underlined, boldface Text indicates additional language

~~Struck-through, boldface text~~ indicates deleted language

Rules, By-Laws and Organization Certificate of The Depository Trust Company

Rule 2 – Participants and Pledges

Section 8

In connection with their use of the Corporation's services, Participants and Pledges must comply with all applicable laws, including applicable laws related to securities, taxation, and-money laundering, as well as sanctions administered and enforced by the Office of Foreign Assets Control ("OFAC"). As part of their compliance with OFAC sanctions regulations, all Participants and Pledges must agree not to conduct any transaction or activity through DTC that it knows violates sanctions administered and enforced by OFAC.

Participants and Pledges subject to the jurisdiction of the United States are required to periodically confirm that the Participant or Pledgee has implemented a risk-based program reasonably designed to comply with applicable OFAC sanctions regulations.

Service Guide of The Depository Trust Company

IMPORTANT LEGAL INFORMATION

The contents of all Service Guides constitute "Procedures" of The Depository Trust Company ("DTC") as defined in the Rules of DTC. If Participants or other authorized users of DTC's services fail to follow these Procedures precisely, DTC shall bear no responsibility for any losses associated with such failures.

In connection with their use of the Corporation's services, Participants and Pledges must comply with all applicable laws, including applicable laws related to securities, taxation, and-money laundering, as well as sanctions administered and enforced by the Office of Foreign Assets Control ("OFAC"). As part of their compliance with OFAC sanctions regulations, all Participants and Pledges must agree not to conduct any transaction or activity through DTC that it knows violates sanctions administered and enforced by OFAC.

CONFIRMATION OF AN OFAC PROGRAM

[User's Letterhead]

Date:

The Depository Trust Company,
National Securities Clearing Corporation,
Fixed Income Clearing Corporation
c/o The Depository Trust & Clearing Corporation
55 Water Street,
New York, NY 10041
Attention: OFAC Officer

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[User name] hereby certifies as follows:

1. *[User name]* is a "United States person" (as defined under applicable OFAC sanctions regulations) that is subject to, and has implemented a risk-based program reasonably designed to comply with, applicable OFAC sanctions regulations.
2. As part of its risk-based compliance program, *[User name]* screens customers **and, as well as where applicable based on identified risk factors, direct and indirect owners, controlling parties or other third-parties where applicable based the *[User name]*'s risk assessment,** against the most recent version of

¹ For the purposes of this certification User means: a Participant or Pledgee of DTC; a Member or Limited Member, with the exception of Commission Billing Members, Data Services Only Members, Municipal Comparison Only Members, **Third Party Administrator Members and Investment Manager/Agent Member** of NSCC; a Member of FICC's Government Securities Division, **with the exception of GSD Comparison Only Members**; and a Participant or a Limited Purpose Participant of FICC's Mortgage-Backed Securities Division, **with the exception of EPN Only Members.**

OFAC's List of Blocked Persons, Specially Designated Nationals, Specially Designated Terrorists, Specially Designated Global Terrorists, Foreign Terrorist Organizations, Specially Designated Narcotics Traffickers, and against any other lists maintained by OFAC (collectively referred to as the "SDN List").

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This Certification of OFAC Compliance applies to any and all accounts for the [User name]'s at the Clearing Agencies.

By: _____
*Authorized OFAC Officer's Signature
on behalf of [User name]*

Title: _____

Name: _____
PRINT

Phone: _____

E-Mail Address: _____

² **For the purpose of the determining the User's knowledge, DTC, FICC and NSCC will utilize the term as defined by OFAC and will rely on determinations made by OFAC pursuant to OFAC Economic Sanctions Enforcement Guidelines.**